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## U.S. SUPREME COURT TAKES CASE IMPACTING CITY PROGRAMS PROVIDING LONG-TERM HOME HEALTH CARE

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New York, Jan. 8, 2007 - The U. S. Supreme Court granted *certiorari* – agreed to hear a case – on Friday (Jan. 5) in *Long Island Care at Home, Ltd. v. Coke*, a case involving the validity of a long-standing U. S. Department of Labor regulation, which provides that employees engaged in providing “companionship services” and employed by someone “other than the family or household using their services” are not subject to the wage and overtime requirements of the Fair Labor Standards Act.

New York City, along with the New York State Association of Counties, a statewide organization representing the state’s 62 counties, had submitted an *amicus* or “friend-of-the-court” brief urging the Court to take the case. Previous decisions by the United States Court of Appeals for the Second Circuit, which declined to enforce the regulation, have serious ramifications in terms of both cost and the provision of care for Medicaid-funded programs that provide non-institutional long-term care to the frail elderly and disabled individuals.

In New York City alone, Medicaid-funded programs providing non-institutional long-term care and personal care services have a combined client caseload of approximately 80,000 clients, who receive services based on their clinical requirements from home attendants employed by different agencies. Individuals may be authorized to receive personal care services for periods of time ranging from two or three hours, two or three times per week, to continuous oversight, 24 hours each day, for more significantly impaired individuals. Accordingly, some home attendants are scheduled to provide services for many more than 40 hours per week.

As a result of the Department of Labor regulation, prior to the Second Circuit’s decisions, the home attendants providing companionship services and assistance with activities of daily living in the Medicaid-funded programs were not subject to the requirements of the Fair Labor Standards Act, such as overtime. The Second Circuit’s decisions would increase the annual cost of the Medicaid-funded programs in the City alone by at least \$279 million. The City pays 10 percent of the programs’ costs, while the federal government pays 50 percent, and the state pays 40 percent. The government will either have to pay for the increased costs of complying with the Fair Labor Standards Act or assume the burden of implementing costly new program controls, such as limiting consumer access and capping service levels. It is unclear whether the funding will be available to cover these cost increases.

The U.S. Supreme Court previously granted *certiorari* in this case in January 2006, vacated the Second Circuit’s July 2004 decision and remanded to the Second Circuit for reconsideration in light of a United States Department of Labor Advisory Memorandum indicating that, notwithstanding the Circuit’s decision, the Department of Labor considered its regulation authoritative and legally binding and would continue to apply the regulation in states outside the Second Circuit. On remand, however, the Second Circuit adhered to the reasoning of its prior decision. The defendants in the case are represented by the law firms Alter & Alter and Farr & Taranto.

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